



M E M O R A N D U M
DEPARTMENT OF GAME & FISH
FIELD OPERATIONS DIVISION



TO: NMDGF – Commissioned Officers
FROM: Captain Ty Jackson
DATE: March 11, 2016
RE: Use of night vision and thermal imaging devices

Law Enforcement Division and the Southeast Area Office have recently received numerous phone calls and e-mails asking about the legality of hunting big game and unprotected species at night on BLM land. This memo should serve to provide a consistent message to anyone asking about this type of hunting.

The question regarding big game (or any protected species except raccoon) is simple to answer. It is illegal to hunt any protected species from the period of ½ hour after sunset until ½ hour before sunrise (except migratory birds which is sunset to ½ hour before sunrise) regardless of the device used. It is a violation of shooting hours and can be cited/arrested under 17-2-7 and the appropriate species regulation or 17-5-4 with 32.2.10 B.10.A for furbearers. Protected species include all of the animals defined as protected wildlife species and game fish under 17-2-3, all of the animals defined as furbearing animals under 17-5-2, all of the bird species listed under 17-2-13, all of the species of hawks and owls listed under 17-2-14 and all of the animals listed as threatened or endangered species on the state or federal list as set by the NM game commission.

The question of hunting unprotected species (non game) at night is a bit more complex. 17-2-31 reads as follows:

17-2-31. Use of artificial light while hunting prohibited.

It is unlawful for a person or a group of persons together in possession or control of a firearm or other implement to throw or cast the rays of a spotlight or other artificial light into any field, pasture, woodland, forest or prairie where big game or domestic livestock may be, or are reasonably expected to be, whereby any big game animal or domestic animal could be killed by aid of an artificial light. However, the following shall be exempt from the provisions of this section:

- A. an officer authorized to enforce the game and livestock

laws of the state;

B. a government employee acting in an official capacity;

C. a landowner or lessee or employee of such landowner or lessee, while on the land owned or leased in connection with legitimate activities; or

D. a person who has received a permit or authorization from the department of game and fish to conduct such activities.

Based on this statute the use or casting of any artificial light while hunting on BLM or anywhere else would be illegal as long as the officer could articulate that big game or domestic livestock are present in the area or could reasonably be expected to be found there. Artificial light could consist of not only visible light but also infrared light. Therefore the use of any device which casts light (whether visible to the naked eye or not) would be illegal even when hunting unprotected species such as coyotes or feral hogs unless a permit has been issued by NMDGF pursuant to 19.30.13. These permits are valid on private land only. This includes but is not limited to lasers, infrared light and any visible light. The only other exemption is for raccoon hunting.

19.30.13.11 DEPARTMENT AUTHORIZATION - RACCOON HUNTING: A validly licensed furbearer hunter is authorized by the department to hunt for and take raccoons by use of artificial light while hunting at night with a rim-fire rifle or handgun no greater in size than a .22 caliber, shotgun, bow or crossbow during open season. The artificial light used for raccoon hunting must be a headlamp or hand held flashlight. It is unlawful for any artificial light to be cast from a vehicle while raccoon hunting.

There is, however, no specific statute or regulation which would prohibit the use of light gathering devices such as night vision or thermal imaging (as long as they are not utilizing the above mentioned infrared lasers or lights in conjunction with these devices). Therefore if a person is using night vision or thermal imaging and the device casts no artificial light and the species being hunted is not subject to shooting hours and they are in an area where the hunting can legally take place (outside of city limits) then it is legal to shoot or hunt for unprotected animals such as coyotes or feral hogs.

One additional consideration in answering this question or dealing with someone in the field would be the issue of negligent use.

30-7-4. Negligent use of a deadly weapon.

A. Negligent use of a deadly weapon consists of:

- (1) discharging a firearm into any building or vehicle or so as to knowingly endanger a person or his property;
- (2) carrying a firearm while under the influence of an intoxicant or narcotic;
- (3) endangering the safety of another by handling or using a firearm or other deadly weapon in a negligent manner; or
- (4) discharging a firearm within one hundred fifty yards of a dwelling or building, not including abandoned or vacated buildings on public lands during hunting seasons, without the permission of the owner or lessees thereof.

B. The provisions of Paragraphs (1), (3) and (4) of Subsection A of this section shall not apply to a peace officer or other public employee who is required or authorized by law to carry or use a firearm in the course of his employment and who carries, handles, uses or discharges a firearm while lawfully engaged in carrying out the duties of his office or employment.

C. The exceptions from criminal liability provided for in Subsection B of this section shall not preclude or affect civil liability for the same conduct.

Whoever commits negligent use of a deadly weapon is guilty of a petty misdemeanor.

of negligent use.

When addressing a question about hunting at night you should always stress safety. Just because it is legal to shoot does not mean it is safe. Officers should stress to the public that hunting/shooting at night carries a heavy responsibility to not injure or kill other public land users, protected wildlife or livestock. There is often no way for a shooter to know whether a camp, vehicle, person or livestock is in the direction of their shots in the dark. Misidentification of a target or careless handling of a firearm is not acceptable and should not be tolerated. Officers should

also clearly state to persons wishing to engage in night coyote or hog hunts that they may be stopped by law enforcement since their activities are highly suspicious and are often indicative of illegal hunting activities. I'm sure none of this is news to many of you in the field but there are quite a few newer officers and I want to ensure that there is a consistent message being given to the public on this issue, especially since several of these individuals have been "shopping" around for different opinions. Keep up the good work and call your Captain or myself if you have questions.

